

1 Debbie P. Kirkpatrick, Esq. (SBN 207112)  
2 Sondra R. Levine, Esq. (SBN 254139)  
3 SESSIONS, FISHMAN, NATHAN & ISRAEL, L.L.P.  
4 1545 Hotel Circle South, Ste 150  
5 San Diego, CA 92108  
6 Tel: 619/758-1891  
7 Fax: 619/296-2013  
dpk@sessions-law.biz  
slevine@sessions-law.biz

8 Attorneys for Defendant Phillips & Cohen Associates, Ltd.

9 UNITED STATES DISTRICT COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 FRANO B. BRESSANUTTI, IRENE ) Case No. 10 CV 1922 MMA CAB  
12 BRESSANUTTI, )  
13 Plaintiffs, )  
14 vs. ) ) ANSWER OF DEFENDANT PHILLIPS  
15 ) & COHEN ASSOCIATES, LTD. TO  
16 ) PLAINTIFFS' COMPLAINT  
17 ADVANTA BANK, PHILLIPS AND )  
18 COHEN ASSOCIATES, LTD., DOES 1 )  
19 THROUGH 100, INCLUSIVE, )  
20 )  
21 Defendants. )

22 Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And  
23 Cohen Associates, Ltd, ("Defendant") appearing for itself and no others, hereby answers  
24 ("Answer") the Complaint ("Complaint") of Plaintiffs Franco B. Bressanutti and Irene  
Bressanutti, as follows:

25 / / /

26 / / /

27  
28 Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And Cohen Associates, Ltd.,'s

Answer to Plaintiffs' Complaint

## **PARTIES AND JURISDICTION**

1. Defendant lacks sufficient information to answer the allegations contained in ¶ 1, and on that basis denies the same.

2. Defendant lacks sufficient information to answer the allegations contained in ¶ 2, and on that basis denies the same.

3. Defendant lacks sufficient information to answer the allegations contained in ¶ 3, and on that basis denies the same.

4. The allegations contained in ¶ 4 of the Complaint are not directed towards this Defendant and do not require an affirmative response. To the extent that a response is required, the allegations are denied.

5. Defendant admits it is a New Jersey corporation doing business in the state of California. Except as expressly admitted, Defendant denies the remaining allegations contained in ¶ 5.

6. Defendant lacks sufficient information to answer the allegations contained in ¶ 6, and on that basis denies the same.

7. Defendant admits Plaintiffs purport to designate the term “Defendants” to include various relationships between the parties, but denies the allegations and any and all legal import of the designation in ¶ 7.

8. Defendant admits that Plaintiffs purport to seek redress for alleged violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And Cohen Associates, Ltd.,'s

*seq.*, and the Rosenthal Fair Debt Collection Practices Act (“RFDCPA) Cal. Civ. Code § 1788, *et seq.* Defendant denies any and all liability, wrongdoing, and damages to the extent alleged in ¶ 8. Except as expressly admitted, Defendant denies the remaining allegations in ¶ 8.

## **GENERAL ALLEGATIONS**

9. Defendant incorporates its responses to paragraphs 1 through 8 as though fully set forth herein.

10. The allegations contained in ¶ 10 of the Complaint are not directed towards this Defendant and do not require an affirmative response. To the extent that a response is required, the allegations are denied.

11. Defendant admits its records indicate that an account identifying Plaintiffs as the account holder as cosigner was placed with it for collection and that Defendant undertook lawful efforts to collect on the account. Except as expressly admitted, Defendant denies the remaining allegations in ¶ 11.

12. The allegations contained in ¶ 12 of the Complaint are not directed towards this Defendant and do not require an affirmative response. To the extent that a response is required, the allegations are denied.

13. Defendant lacks sufficient information to answer the allegations contained in ¶ 13, and on that basis denies the same.

111

Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And Cohen Associates, Ltd.,'s

## Answer to Plaintiffs' Complaint

1       14. The allegations contained in ¶ 14 of the Complaint are not directed towards  
2 this Defendant and do not require an affirmative response. To the extent that a response  
3 is required, the allegations are denied.  
4

5       15. The allegations contained in ¶ 15 of the Complaint are not directed towards  
6 this Defendant and do not require an affirmative response. To the extent that a response  
7 is required, the allegations are denied.  
8

9       16. The allegations contained in ¶ 16 of the Complaint are not directed towards  
10 this Defendant and do not require an affirmative response. To the extent that a response  
11 is required, the allegations are denied.  
12

13       17. Defendant admits its records indicate that an account identifying Plaintiffs  
14 as the account holder as cosigner was placed with it for collection in August 2009.  
15 Except as expressly admitted, Defendant denies the remaining allegations in ¶ 17.  
16

17       18. Defendant denies the allegations contained in ¶ 18.  
18

19       19. Defendant denies the allegations contained in ¶ 19.  
20

21       20. Defendant admits its records show a telephone call placed to the Plaintiff  
22 on or about December 21, 2009. Except as expressly admitted, Defendant lacks sufficient  
23 information to answer the remaining allegations contained in ¶ 20, and on that basis  
24 denies the same.  
25

26       21. Defendant admits its records show a telephone call placed to the Plaintiff  
27 on or about December 22, 2009. Except as expressly admitted, Defendant lacks sufficient  
28

Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And Cohen Associates, Ltd.,'s

Answer to Plaintiffs' Complaint

1 information to answer the remaining allegations contained in ¶ 21, and on that basis  
2 denies the same.  
3

4 22. Defendant denies the allegations contained in ¶ 22.

5 **FIRST CAUSE OF ACTION**

6 (VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT)

7 23. Defendant incorporates its responses to paragraphs 1 through 22 as though  
8 fully set forth herein.

9 24. Defendant avers the allegation contained in ¶ 24 that Defendants are “debt  
10 collectors” as that term is defined by statute, and is a legal conclusion which does not  
11 require an admission or denial. Defendant refers all matters of law to the court. Except  
12 as expressly admitted, Defendant denies the remaining allegations contained in ¶ 24

13 25. Defendant avers the allegation contained in ¶ 25 that Plaintiffs are  
14 “consumers” as the term is defined by statute is a legal conclusion which does not require  
15 an admission or denial. Defendant refers all matters of law to the court. Except as  
16 expressly admitted, Defendant lacks sufficient information to answer the remaining  
17 allegations contained in ¶ 25, and on that basis denies the same.

18 26. Defendant denies the allegations contained in ¶ 26, and subparagraphs a  
19 through c, inclusive, to the extent they are directed at this answering Defendant. To the  
20 extent the allegations are directed to another defendant, this answering Defendant lacks  
21

22  
23  
24  
25  
26  
27  
28 Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And Cohen Associates, Ltd.,’s

Answer to Plaintiffs’ Complaint

1 sufficient knowledge or information to answer the allegations contained in ¶ 26 of the  
2 Complaint and on that basis denies the same.  
3

4 27. Defendant denies the allegations contained in ¶ 27 to the extent they are  
5 directed at this answering Defendant. To the extent the allegations are directed to another  
6 defendant, this answering Defendant lacks sufficient knowledge or information to answer  
7 the allegations contained in ¶ 27 of the Complaint and on that basis denies the same.  
8

9 28. Defendant denies the allegations contained in ¶ 28 to the extent they are  
10 directed at this answering Defendant. To the extent the allegations are directed to another  
11 defendant, this answering Defendant lacks sufficient knowledge or information to answer  
12 the allegations contained in ¶ 28 of the Complaint and on that basis denies the same.  
13

14 **SECOND CAUSE OF ACTION**  
15

16 (VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION  
17

18 PRACTICES ACT)

19 29. Defendant incorporates its responses to paragraphs 1 through 28 as though  
20 fully set forth herein.  
21

22 30. Defendant avers the allegation contained in ¶ 30 that Defendants are “debt  
23 collectors” as that term is defined by statute, and is a legal conclusion which does not  
24 require an admission or denial. Defendant refers all matters of law to the court. Except  
25 as expressly admitted, Defendant denies the remaining allegations contained in ¶ 30  
26  
27

28 Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And Cohen Associates, Ltd.,’s

Answer to Plaintiffs’ Complaint

1       31.   Defendant avers the allegation contained in ¶ 31 that Plaintiffs are “debtors”  
2 as the term is defined by statute is a legal conclusion which does not require an admission  
3 or denial. Defendant refers all matters of law to the court. Except as expressly admitted,  
4 Defendant lacks sufficient information to answer the remaining allegations contained in ¶  
5 31, and on that basis denies the same.  
6

7       32.   Defendant avers the allegation contained in ¶ 32 that Plaintiffs are  
8 “consumers” as the term is defined by statute is a legal conclusion which does not require  
9 an admission or denial. Defendant refers all matters of law to the court. Except as  
10 expressly admitted, Defendant lacks sufficient information to answer the remaining  
11 allegations contained in ¶ 32, and on that basis denies the same.  
12

13       33.   Defendant denies the allegations contained in ¶ 33, and subparagraphs a  
14 through g, inclusive, to the extent they are directed at this answering Defendant. To the  
15 extent the allegations are directed to another defendant, this answering Defendant lacks  
16 sufficient knowledge or information to answer the allegations contained in ¶ 33 of the  
17 Complaint and on that basis denies the same.  
18

19       In response to the paragraph beginning with WHEREFORE, Defendant admits  
20 that Plaintiffs purport to seek redress for alleged violations of the FDCPA, 15 U.S.C. §  
21 1692 *et seq.*, and the RFDCPA, Cal. Civ. Code § 1788, *et seq.* but denies violating the  
22 FDCPA and /or the RFDCPA and denies Plaintiffs are entitled to the requested relief.  
23  
24       //  
25  
26

27       Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And Cohen Associates, Ltd.,’s  
28

Answer to Plaintiffs’ Complaint

## DEFENDANT'S AFFIRMATIVE DEFENSES

## **FIRST AFFIRMATIVE DEFENSE**

## **(Failure to State a Cause of Action)**

As a first affirmative defense, Defendant alleges that Plaintiffs' Complaint should be dismissed because the various causes of action fail to state claims upon which relief can be granted.

## **SECOND AFFIRMATIVE DEFENSE**

### **(Bona Fide Error: FDCPA)**

As a second affirmative defense, Defendant alleges, pursuant to 15 U.S.C. § 1692k(c), to the extent that a violation(s) is established, any such violation(s) was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures reasonably adapted to avoid any such violation.

### **THIRD AFFIRMATIVE DEFENSE**

### **(Bona Fide Error: RFDCPA)**

As a third affirmative defense, Defendant alleges, pursuant to California *Civil Code* § 1788.30(e), to the extent that a violation(s) is established, any such violation(s) was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures reasonably adapted to avoid any such violation.

///

111

Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And Cohen Associates, Ltd.,'s

## Answer to Plaintiffs' Complaint

## **FOURTH AFFIRMATIVE DEFENSE**

**(Consent)**

As a fourth affirmative defense, Defendant alleges that Plaintiffs consented to and/or invited the conduct for which they seeks relief.

## **FIFTH AFFIRMATIVE DEFENSE**

### (Waiver)

As a fifth affirmative defense, Defendant alleges that Plaintiffs knowingly and voluntarily waived their rights to obtain any or all of the relief sought in the Complaint.

## SIXTH AFFIRMATIVE DEFENSE

### **(Reservation of Rights)**

As a fifth affirmative defense, Defendant states that it currently has insufficient information upon which to form a belief as to whether it has additional affirmative defenses available. Defendant reserves its right to assert additional affirmative defenses in the event investigation and discovery indicate they would be appropriate.

WHEREFORE, Defendant Phillips & Cohen Associates, Ltd. respectfully requests that:

1. Plaintiffs take nothing by way of this Complaint;
2. Judgment of dismissal be entered in favor of Defendant Phillips & Cohen  
Associates, Ltd.;

Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And Cohen Associates, Ltd.'s

## Answer to Plaintiffs' Complaint

3. Defendant Phillips & Cohen Associates, Ltd. be awarded costs and attorney's fees it has incurred in defending this lawsuit;
4. Defendant Phillips & Cohen Associates, Ltd. is granted such other and further relief as the Court deems just and proper.

Dated: 9/16/10

SESSIONS, FISHMAN, NATHAN & ISRAEL, L.L.P.

*/s/Sondra R. Levine*

Sondra R. Levine  
Attorneys for Defendant Phillips & Cohen Associates,  
Ltd.

Defendant Phillips & Cohen Associates, Ltd., erroneously sued as Phillips And Cohen Associates, Ltd.,'s

## Answer to Plaintiffs' Complaint